

OCT 11 2005

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DONALD JAMES IKARI,

Defendant - Appellant.

No. 04-50320

D.C. No. CR-04-31-LGB

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Lourdes G. Baird, District Judge, Presiding

Submitted August 1, 2005**

Before: O'SCANNLAIN, CALLAHAN, and BEA, Circuit Judges

Donald James Ikari appeals his sentence imposed following his guilty plea to possession of child pornography in violation of 18 U.S.C. § 2252A. He contends that pursuant to *Blakely v. Washington*, 124 S. Ct. 2531 (2004), the district court

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

violated his constitutional rights in making upward adjustments under U.S.S.G. § 2G2.4(b). Ikari was sentenced before the United States Supreme Court held in *United States v. Booker*, 125 S. Ct. 738, 764 (2005), that the Sentencing Guidelines were effectively advisory. The record does not show how the district court would have proceeded if it had known that the Guidelines were not mandatory, and the original sentencing judge is not available. Accordingly, we vacate the sentence and remand for resentencing. *See United States v. Sanders*, No. 03-50471, 2005 WL 2088411 (9th Cir. Aug. 31, 2005).

VACATED and REMANDED.